

REMARKS**Change in Correspondence Address**

Submitted herewith is a Revocation and Grant of Power of Attorney including a change in attorney docket number and correspondence address.

Response to Restriction Requirement

Claims 1, 3-22, 25-27, 33-40, 47, 51-53, 55 and 58 are pending. Claims 31, 38 and 59 have been amended. Claim 31 has been amended to correct a typographical error. Support for the amendment to claim 31 is found on page 7, line 27 of the Specification. The amendments to claims 38 and 59 corrected grammatical errors.

Claims 1, 3-22, 25-27, 33-40, 47, 51-53, 55 and 58 are subject to restriction under 35 U.S.C. §121 for prosecution on the merits because the Examiner contends that the application contains claims directed to five (5) patentably distinct inventions as follows:

Group I: Claims 1, 3-28, 37-40 and 59-61, drawn to an N-propionated polysaccharide-protein conjugate and a vaccine comprising the same, classified in class 424, subclass 831;

Group II: Claims 29-36, drawn to a method of making beta-propionamido-linked polysaccharide or oligosaccharide-protein conjugate, classified in class 536, subclass 127;

Group III: Claims 41-47, drawn to a method of immunizing a mammal comprising administering to the mammal the vaccine of claim 37, classified in class 424, subclasses 234.1;

Group IV: Claims 48-54, drawn to an immunoglobulin or antigen binding fragment thereof to the beta-propionamido-linked oligosaccharide or polysaccharide conjugate, classified in class 530, subclass 387.5; and

Group V: Claims 55-58 and 62-65, drawn to a method of passive immunization against a disease-causing organism or disease-causing cell comprising administering an immunoglobulin of claims 48 or 51, classified in class 424, subclass 150.1.

Applicants elect Group I (claims 1, 3-28, 37-40 and 59-61) directed to an N-propionated polysaccharide-protein conjugate and a vaccine comprising the same with traverse for prosecution on the merits. With respect to the election of species requirements discussed below, Applicants elect with traverse the polysaccharide or oligosaccharide species (h) *Streptococcus* group B (claims 4, 5, and 39), the second immunogenic component species (b) diphtheria-tetanus-acellular pertussis (DTaP) (as applied to claims 25 and 40) and the protein species (a) tetanus toxoid (as applied to claims 8, 35 and 61). These election are made without waiver of Applicants' right to file and prosecute to allowance the claims to the non-elected subject matter in a continuation or divisional application claiming priority herefrom. As is set forth in detail below, this election is made with traverse.

Applicants respectfully traverse the restriction requirement as set forth by the Examiner because (1) Applicants are entitled to prosecution of claims covering a reasonable number of species disclosed in an application in accordance with 37 C.F.R. §1.146; and (2) there would be no undue burden on the Examiner to conduct a substantive examination of the claims as related to the embodiments disclosed in the instant application.

The Examiner contends that restriction is appropriate because the groups are not coextensive and have divergent subject matter. Because a search of the claimed subject matter

would not be burdensome, Applicants respectfully request withdrawal of the restriction requirement.

According to M.P.E.P. §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The invention must be independent as claimed; and
- (2) There must be serious burden on the Examiner if restriction is not

required.

Applicants respectfully submit that (1) all groups of the restricted claims are properly presented in the same application; (2) undue diverse searching would not be required; and (3) all claims should be examined together.

The Examiner has not shown that examination of all the pending claims would require undue searching and/or place a serious burden on the Examiner, which is a requisite showing for proper issuance of a restriction requirement. In fact, of the five groups of invention identified by the Examiner, three are in the same class (424). Thus, by searching a single class, the Examiner will have researched three of the five groups. So at a minimum, these groups, Groups I, III and V, should be examined together. To search prior art in a single class cannot be deemed "undue diverse searching." Accordingly, Applicants respectfully traverse the requirement for restriction at least on the grounds that examining the identified groups would not be unduly burdensome.

Furthermore, the Office Action acknowledges that Groups I, II, and III are related as a product (Group I), process of making the product (Group II) and process of using the product (Group III). (*See* Office Action dated Sep. 26, 2006, p.3). Accordingly, the claims of Groups I, II and III are properly presented in the same application. (*See* MPEP 806.05(f) and (i)).

Should the Examiner find Group I (claims 1, 3-28, 37-40 and 59-61) allowable, Applicants respectfully request the withdrawal of the restriction requirement and examination of Groups II (claims 29-36) and III (claims 41-47) on the merits.

As indicated above, Applicants elect with traverse the polysaccharide or oligosaccharide species (h) *Streptococcus* group B (claims 4, 5, and 39), the second immunogenic component species (b) diphtheria-tetanus-acellular pertussis (DTaP) (as applied to claims 25 and 40) and the protein species (a) tetanus toxoid (as applied to claims 8, 35 and 61). However, Applicants respectfully submit that the election of species requirements are improper. According to 37 CFR 1.146, prior to examination, the Examiner may require an election of species to not more than a reasonable number of species before taking further action in the application. In addition, the MPEP states that “an allowable generic claim may link a reasonable number of species embraced thereby” (see MPEP 806.04). The Examiner’s position that “one” is the maximum reasonable number of species is inconsistent with 37 CFR 1.146 and the MPEP. The instant claims present a reasonable number of species embraced thereby. Therefore, Applicants are entitled to examination of all of the pending claims. Applicants respectfully request withdrawal of the election of species requirement.

However, should the Examiner maintain the requirement for election of species, Applicants note that the Office Action acknowledges that that claims 1, 8-16, 18-28, 37, 40 and 59-61 are generic. (Office Action dated Sep. 26, 2006, p.4). Should the Examiner find any one of claims 1, 8-16, 18-28, 37, 40 and 59-61 allowable, Applicants respectfully request the withdrawal of the restriction requirement for the election of polysaccharide or oligosaccharide species, the election of second immunogenic component species and of claims 3-7, 17 and 38-39, each of which depends from one of the generic claims identified above. The Office Action also

acknowledged that claim 9 is generic with respect to the protein species. (Office Action dated Sep. 26, 2006, p.5). Should the Examiner find claim 9 to be allowable, Applicants respectfully request the withdrawal of the restriction requirement for the election of a protein species as well.

CONCLUSION

Based on the foregoing remarks, Applicants respectfully request reconsideration and withdrawal of the restriction/election of species requirement and allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **50-3732**, Order No. 13564.105037. In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **50-3732**, Order No. 13564.105037.

Respectfully submitted,
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By: _____

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